



# Litigation Update

Litigation Section News

November 2004

**When the label says "Napa," it's from Napa.** A four-year old state statute (*Bus. & Prof. Code*, § 25241) prohibits a wine label from bearing the word "Napa," or the name of any federally recognized viticultural region within Napa County, unless at least 75 percent of the grapes come from Napa County. Our Supreme Court held that this statute was not preempted by federal law. Wines made from Central Valley grapes may no longer be labeled "Napa Ridge," "Rutherford Vintners," or carry a similar designation. The prior approval of these labels by a federal agency did not preempt the state statute. See, *Bronco Wine Company v. Jolly* (Cal.Supr.Ct. August 5, 2004) 33 Cal.4th 943, [95 P.3d 422, 17 Cal.Rptr.3d 180, 2004 DJDAR 9587]. Of course a petition for certiorari to the U.S. Supreme Court will undoubtedly follow. Meanwhile, enjoy your Napa County chardonnay.

**Arbitrators are immune from liability.** In affirming a dismissal after the trial court sustained a demurrer, the Court of Appeal held that arbitrators are immune from liability. After losing in an

AAA arbitration, plaintiff sued that organization alleging that the arbitrator had been biased. The court held that, although a statutory immunity did not apply, (the statute, *Code Civ. Proc.*, § 1280.1 expired by its terms in 1997) there is a common law immunity shielding arbitrators from liability. See, *Stasz v. Charles Schwab* (Cal.App. Second Dist., Div. 1, August 5, 2004) 121 Cal.App.4th 420, [17 Cal.Rptr.3d 116, 2004 DJDAR 9623] also note *Code Civ. Proc.*, § 1297.119 and *Bus. & Prof. Code*, § 6200; these statutes provide for arbitrators' immunity in specific types of arbitration.

**No changes in operations of our courts or of the State Bar in recommendations to governor.** The State Bar's legislative representative reported that the 2500 page *California Performance Review* that recommended drastic changes in the structure of California's government structure does not propose changes in the operation of either our courts, or of the State Bar. The Review was in response to Governor Schwarzenegger's announced intent to "blow up boxes" in Sacramento.

**Right to disqualify trial judge after appellate reversal does not apply to writ review.** *California Code of Civil Procedure* § 170.6 (a) (2) provides that, after a judgment is reversed on appeal and a new trial is ordered, any party may exercise a peremptory challenge against the trial judge who issued the now reversed judgment. This provision was held not to apply where the Court of Appeal had issued a writ of mandate ordering the trial court to reverse a ruling made during the pleading stage of the case. See, *State Farm Mutual Automobile Ins. Co. v. Superior Court* (Cal.App. Second Dist., Div. 1, August 9, 2004) 121 Cal.App.4th 490, [17 Cal.Rptr.3d 146, 2004 DJDAR 9747].

**A prospective employer who recruits an at-will employee, using wrongful methods, may be liable for intentional interference with prospective economic advantage.** In *GAB Business Services Inc. v. Lindsey & Newsom Claim Services Inc.* (2000) 83 Cal.App.4th 409, [99 Cal.Rptr.2d 665], the Court of Appeal held that there could be no liability for inducing at-will employees to leave their employment. The California Supreme Court overruled *GAB* in *Reeves v. Hanlon* (Cal.Supr.Ct.; August 12, 2004) 33 Cal.4th 1140, [95 P.3d 513, 17 Cal.Rptr.3d 29, 2004 DJDAR 9911]. *Reeves* predicated the new employer's liability on the new employer having engaged in independently wrongful conduct (violation of *The Trade Secret Act, Civ. Code*, § 3426 *et seq.*). Independently wrongful conduct is a necessary element of the tort of intentional interference with prospective economic advantage. See, *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376. [902 P.2d 740, 45 Cal.Rptr.2d 436]

## Litigation Section Events Section Education Institute

January 28–30, 2005  
Palace Hotel  
San Francisco, CA

See Website for Details:  
[www.calbar.ca.gov/SEI](http://www.calbar.ca.gov/SEI)

## Annual Trial Symposium

April 15–17, 2005  
Silverado Country Club and Resort  
Napa Valley, CA  
Details Available on Website Soon

## Discussion Board Participation

We are having great participation on our State Bar Litigation Section Bulletin Board. Join in on the exciting discussions and post your own issues for discussion. Our Board is quickly becoming "The Place" for litigators to air issues all of us are dealing with. Go to: [www.Calbar.ca.gov](http://www.Calbar.ca.gov) to explore the new bulletin board feature—just another benefit of Litigation Section membership.

**A non-party parent may, under certain circumstance, be treated as a minor plaintiff's agent under the discovery statutes.** *Cruz v. Superior Court* (Cal. App. Fourth Dist., Div. 3, August 12, 2004) 121 Cal.App.4th 646 [17 Cal.Rptr.3d 368, 2004 DJDAR 9951] (Reh. Den. September 9, 2004) affirmed a trial court order that the mother of a minor plaintiff suing for birth injuries submit to a blood test where her genetic condition might have contributed to the minor's injuries. *Code Civ. Proc.*, § 2032 authorizes medical examinations of a party, the party's agents, or persons under the party's custody or legal control. Although parents are not their children's agents in a technical sense, the relationship bears a sufficient similarity to that of principal and agent because of the parent's power to make decisions that are binding on the minor. The *Cruz* opinion stated that parents would not necessarily be treated as their minor children's agent for all purposes. But under the facts of the case, which included issues relating to mother's own medical treatment by the defendant physicians, the characterization was appropriate.

**Non-renewal of employment contract cannot be the basis for a wrongful termination claim.** The non-renewal of an employment contract for a specified term does not constitute an adverse employment

action and thus cannot give rise to a claim for the tort of wrongful termination. *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, [610 P.2d 1330, 164 Cal.Rptr. 839]. Tameny recognized a cause of action in tort for the wrongful discharge of an employee in contravention of fundamental public policy. But where an employment contract expired by its own terms, the failure to renew the contract, for whatever reason, could not be the basis for a Tameny claim. *Motevalli v. Los Angeles Unified School District* (Cal.App. Second Dist., Div 3; September 9, 2004) 122 Cal.App.4th 97, [18 Cal.Rptr.3d 562, 2004 DJDAR 11283]; also see, *Daly v. Exxon Corp.* (1997) 55 Cal.App.4th 39 [63 Cal.Rptr.2d 727].

**Plaintiff cannot avoid paying defendant's fees under the anti-SLAPP statute by amending the complaint.** *California Code of Civil Procedure* § 425.16 is California's anti-SLAPP statute. (SLAPP is the acronym for "Strategic Lawsuit Against Public Participation;" the statute provides a summary procedure to strike suits designed to thwart the exercise of constitutional rights.) Defendants who successfully move to strike a complaint or a cause of action under the statute are entitled to their attorney fees. Defendant filed such a motion as to one of plaintiff's causes of action but, before the court could rule on it, plaintiff amended the complaint. The court nevertheless awarded attorney fees and plaintiff appealed, arguing that the amendment rendered the anti-SLAPP motion moot. Not so. Once the motion was filed, the court properly determined whether the pre-amendment cause of action satisfied the criteria of the statute and, because it did, the court properly awarded attorney fees. *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (Cal.App. Second Dist., Div. 4; September 29, 2004) 122 Cal.App.4th 1049, [18 Cal.Rptr.3d 882, 2004 DJDAR 12150].

**No right to immediate appeal where anti-SLAPP motion is denied because cause of action is exempt.** *California Code of Civil Procedure* §

425.16, the anti-SLAPP statute, provides that after losing a motion under the statute, the defendant may immediately appeal the decision. Section 425.17, enacted in 2003, specified that certain causes of action and certain plaintiffs were exempt from the provisions of § 425.16. When the anti-SLAPP motion is denied because the provisions of § 425.17 exempt the cause of action, the right to an immediate appeal provided in § 425.16 does not apply. *Goldstein v. Ralphs Grocery Company* (Cal.App. Second Dist. Div. 5; September 13, 2004) 122 Cal.App.4th 229 [2004 DJDAR 11417].

**Supreme Court to decide whether statute can limit court's power to hear a renewed motion.** In our August newsletter we report that in *LeFrancois v. Goel* (Sixth App.Dist., May 20, 2004) 119 Cal.App.4th 425, [14 Cal.Rptr.3d 321], the Court of Appeal held that, in spite of the limitations on renewed motions contained in *Code of Civil Procedure* § 1008(a), courts retain the inherent power to correct its own errors. The case also held that the right to have a renewed motion heard by the same judge was waived by failure to object to a different judge hearing the motion. The California Supreme Court has now granted hearing, so the case may no longer be cited. But, *Scott Co. v. United States Fidelity & Guaranty Ins. Co* (2003) 107 Cal.App.4th 197, [132 Cal.Rptr.2d 89], which is essentially to the same effect as *LeFrancois* continues to provide precedent, unless and until our Supreme Court reverses the latter case.

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## Jury Instructions

We would like to hear about any problems or experiences you've had with the new jury instructions. Please provide your comments by sending them to Paul Renne at [PRenne@cooley.com](mailto:PRenne@cooley.com) or to Rick Seabolt at [RLSeabolt@HRBlaw.com](mailto:RLSeabolt@HRBlaw.com)

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